CHEN TETI

v.

ORNARESORT BHD

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[CIVIL SUIT NO: (2)-22-64-2001]
28 FEBRUARY 2003

CIVIL PROCEDURE: *Costs - Getting-up fee - Successful defendant in O. 81 application - Review of costs - Whether costs awarded excessive - Rules of the High Court 1980, O. 59 r. 36(1)*

Pursuant to O. 59 r. 36(1) of the Rules of the High Court 1980 ('RHC'), the plaintiff applied for a review of the getting-up fee of RM18,000 awarded by the registrar to the successful defendant in the plaintiff's summons-in-chambers for summary judgment under O. 81 RHC. The issue before the court was whether the said costs were excessive and unreasonable.

Held:

[1] The principles in *JP Finance (M) Bhd v. Tanswan Brothers Enterprise Sdn Bhd & Ors* were applicable even though that case was in respect of an O. 14 application. The defendant should not be allowed anything significantly greater than the amount that would have been awarded to the plaintiff if he had been successful in his application. Neither the plaintiff nor the defendant was required to prove their case at that stage. If final judgment was entered, it was only entered because there were no triable issues that merited the matter going to trial. It would not be because the plaintiff had proved his case. Although O. 14 and O. 81 applications are mutually exclusive, O. 81 provides for a procedure similar to O. 14. The principles enunciated in the aforesaid case appeared to have escaped the attention of the registrar thereby resulting in an error of principle. A review of the taxed costs was necessary. (pp 102 e-h & 103 a-f)

[Application allowed; RM16,000 taxed off from costs of RM18,000 and sum of RM2,000 allowed as costs for defendant with 8% interest per annum; plaintiff awarded costs of RM250 with 8% interest for review application.]

Case(s) referred to:

Alloy Automotive Sdn Bhd v. Perusahaan Ironfield Sdn Bhd [1986] 1 CLJ 2; [1986] CLJ (Rep) 45 SC ***(refd)***

Bank Bumiputra Malaysia Bhd v. Sri Kajang Sdn Bhd & Ors [2002] 1 CLJ 339 HC ***(refd)***

Bar Council v. Datuk Kanagalingam [2000] 3 CLJ 697 FC ***(refd)***

Chan Kok Choon JP v MBf Fnance Bhd [2001] 4 CLJ 453 CA ***(refd)***

Coon v. Diamond Tread Co Ltd [1950] 2 All ER 385

Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC ***(refd)***

Gooi Hock Seng v. Chuah Guat Khim, Pemegang harta pesaka bagi estet Chuah Teow Hock, simati [2001] 1 CLJ 583 SC ***(refd)***

Hunt v. RM Douglas (Roofing) Ltd [1988] 3 All ER 823

JP Finance (M) Bhd v. Tanswan Brothers Enterprise Sdn Bhd & Ors [1994] 3 CLJ 318 HC ***(foll)***

Kerajaan Negeri Johor & Anor v. Adong Kuwau & Ors [2002] 4 CLJ 259 FC ***(refd)***

Lau Kah Ding & Sons Sdn Bhd v. Tamasa Development Sdn Bhd [2001] 7 CLJ 288 HC ***(refd)***

Liau Kim Lian v. Bajuria [1971] 1 MLJ 276 ***(refd)***

Lloyds Bank Plc v. Ang Cheng Ho Quarry & 3 Ors [1993] 2 CLJ 210 HC ***(refd)***

Southern Finance Co Bhd v. Zamrud Properties Sdn Bhd (No 3) [1999] 4 CLJ 754 HC ***(refd)***

United Malayan Banking Corporation Bhd v. Syarikat Perumahan Luas Sdn Bhd [1991] 1 CLJ 594; [1991] 4 CLJ (Rep) 163 HC ***(refd)***

Wong Tham Meng v. Tiang Eng & Anor [2001] 6 CLJ 548 HC ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 11

Rules of the High Court 1980, O. 14 r. 1(3), O. 59 rr. 34(1), 36(1), O. 81 r. 1(1)

Other source(s) referred to:

Halsbury's Laws of England, 4th edn, vol 37, paras 757-850

For the plaintiff - Ramani Krishnan; M/s Sabarudin Othman & Ho

For the defendant - KP Ng; M/s KP Ng & Amardas

[For recent case on getting-up fee please see also Vong Ban Hin v. Laksamana Realty Sdn Bhd [2003] 3 CLJ 129.]

Reported by Usha Thiagarajah

JUDGMENT

Low Hop Bing J:

Review Of Taxation Of Costs

This is the plaintiff's application under O. 59 r. 36(1) of the Rules of High Court 1980 for a review of the decision of the learned registrar who had on 22 April 2002 awarded to the defendant a sum of RM18,000 by way of costs for getting up. The ground of this application before me is that the said award is excessive.

Background To This Application

The plaintiff is a purchaser and the defendant a developer, who have entered into two agreements under which the plaintiff has agreed to purchase and the defendant has agreed to sell two vacant bungalow lots.

The plaintiff alleged that the defendant has failed to comply with the agreements in that infrastructural works had not been completed within the prescribed time and that there was no approval from the authorities to carry out the said infrastuctural works.

Vide encl. (6), the plaintiff applied for, *inter alia*, several declaratory orders, a refund of RM47,668 paid by the plaintiff to the defendant pursuant to the agreements, interest at 10% under the agreements and exemplary damages. Enclosure (6), an application for summary judgment under O. 81 of the Rules of High Court 1980, was heard by Ahmad Maarop JC (now J) who held that there were triable issues, as a result of which, encl. (6) was dismissed with costs.

The bill of costs for taxation was heard before the learned registrar on 9 April 2002 who awarded RM18,000 by way of costs for getting up, while the defendant's claim was for RM22,000. There was a review under O. 59 r. 34(1) before the learned registrar who confirmed the said costs of RM18,000 on 22 April 2002.

Submission For Plaintiff

Cik Ramani Krishnan, learned counsel for the plaintiff, submitted that there were no novel or complex issues in the plaintiff's interlocutory application in encl. (6), and that the learned registrar has failed to take into account the value of the subject matter. Primarily, she relied on *JP Finance (M) Bhd v. Tanswan Brothers Enterprise Sdn Bhd & Ors* [1994] 3 CLJ 318 (HC).

Contention For Defendant

It was submitted by learned counsel Encik K.P. Ng for the defendant that the prayer for the refund of RM47,668 was one of the orders sought by the plaintiff and that it was not true that the value of the subject matter was merely RM47,668.

He added that the award by the learned registrar should not be disturbed unless he has erred in law as a matter of principle and that the registrar has applied the correct principles under O. 59 Appendix 1, Part X of the Rules of the High Court 1980.

He stressed that there are several triable issues for the defendant and so there should be costs for getting up on all these issues.

He added that costs should not be based on a percentage of the value of the subject matter and certainly not on the sum of RM47,668 as this was merely one of the prayers.

Apart from arguing for the defendant that the learned registrar's award was fair and reasonable, learned counsel also urged the court to award interest of 8% per annum with effect from 3 December 2001 on RM18,000.

Decision Of The Court

The issue before me is whether the aforesaid costs of RM18,000 awarded against the plaintiff in an unsuccessful interlocutory application for summary judgment under O. 81 is excessive and unreasonable.

Review Judge's Function

It will be useful at this stage to state some principles of general application in relation to the functions of a judge in hearing a review of the taxation of the bill of costs under O. 59 r. 36(1).

In *United Malayan Banking Corporation Bhd v. Syarikat Perumahan Luas Sdn Bhd* [1991] 1 CLJ 594; [1991] 4 CLJ (Rep) 163 (HC) there was an application under O. 59 r. 36 for a review by the Judge of the High Court of the taxation of the registrar. Edgar Joseph Jr. J (later FCJ) observed that:

> It is settled law that in cases such as the present, unless it can be demonstrated that the Taxing Registrar has erred on a question of principle, this court would have no jurisdiction to interfere (see *Coon v. Diamond Tread Co. Ltd* [1950] 2 All ER 385).

This seems to be the traditional approach which has been restated by Chong Siew Fai J (later CJ (Sabah & Sarawak) in *Lloyds Bank Plc v. Ang Cheng Ho Quarry & 3 Ors.* [1993] 2 CLJ 210 (HC). His Lordship at p. 212d right to p. 213a left also referred to and adopted the more recent and modern practice in the judge's review of taxation by the registrar, as follows:

> As for review by a Judge, O. 59, r. 36(4) (similar to English RSC O. 62 r. 35(4)) provided that save for the qualification therein stated respecting the reception of further evidence and raising fresh ground of objection, the Judge may exercise all such powers and discretion as are vested in the Registrar in relation to the subject matter of the application. It has been the practice developed through numerous cases that in matters respecting which the taxing officer has a discretion, the awards should not be interfered with unless he has gone on some wrong principle, or his decision is plainly wrong, or for some other reason similar to those which will induce an appellate Court to interfere with the discretion of a Judge of the first instance eg, that matters that ought but was not taken into account (see further *Halsbury's Laws of England* 4th Ed. Vol. 37 paras. 757-850). However, in a recent case of *Jackson v. Parker* and *Gurney Champion* (5 November 1985 unreported) the English Court of Appeal (per Balcombe J) expressed that the above approach of allowing review on limited circumstances some of which are described above, no longer represented the modern approach, and that there was no limitation on the Court's power to review any decision of a taxing master, whether on quantum, fact or otherwise. In an earlier case of *Thome v. Thome* [1979] 1 WLR 659 observation was made along this vein when Comyn J after considering the 3 cases therein cited, spoke of:
>
> > a rather clearer principle than they enunciate, and a definite one, that a taxation certificate can be set aside where the Court thinks it right and proper in all the circumstances to do so (p. 665).

The Court of Appeal in *Chan Kok Choon JP v. MBf Finance Bhd* [2000] 4 CLJ 453 held that a judge's review of a registrar's taxation should not be treated as an appeal and that for a judge to interfere, there must be some error of principle or other material error. The judgment of the Court of Appeal also demonstrated the importance of having regard to the specific type of application, proceeding, matter, cause or process brought before the court for hearing and determination which culminated in an order as to the costs under registrar's taxation and review, and the eventual review by the judge.

In *Gooi Hock Seng v. Chuah Guat Khim, Pemegang harta pesaka bagi estet Chuah Teow Hock, simati* [2001] 1 CLJ 583, Abdul Malek Ahmad FCJ sitting in the Supreme Court reaffirmed the function of a judge in hearing the review of a registrar's taxation which appeared at p. 3941 of the *Malaysian Court Practice – High Court* vol. 1 as follows:

> The phrase 'as the circumstances require' in r. 36(5) confers on the Judge a discretion which is to be judicially exercised. The Judge should not interfere with the Registrar's decision unless there is an error of principle or some other material error and for this purpose, a broad overview of the matter should be taken. Hence, the hearing before the Judge is not a rehearing but is a review: *Diversey (Far East) Pte Ltd v. Choi Chung Ching Chester & Ors (No 2)* [1993] 1 SLR 542.
>
> The court will not interfere with the decision of the taxing Registrar upon a mere question of quantum if the taxing Registrar has exercised his discretion after consideration of all the circumstances and if no question of principle arises. It is only when the taxing Registrar's decision has been exercised on some wrong principle or the quantum allowed is obviously wrong that the Judge will interfere: *Starlite Ceramic Industry Ltd v. Hiap Huat Pottery* [1973] 1 MLJ 146.
>
> The Judge should not interfere ... unless the Registrar has made an obvious mistake, or has exercised his discretion capriciously or mischievously: *Corbett v. Ipoh Tin Dredging Ltd* [1936] MLJ 278.

(see also *Kerajaan Negeri Johor & 1 Lagi v. Adong bin Kuwau & 51 Lagi* [2002] 4 CLJ 259 per Abdul Malek Ahmad FCJ and *Southern Finance Co. Bhd v. Zarnrud Properties Sdn Bhd (No. 3)* [1999] 4 CLJ 754). All the aforesaid authorities setting out the functions of a judge in the review of registrar's taxation of bills of costs have been cited by learned counsel for the defendant in whose favour the costs of RM18,000 had been awarded.

The Supreme Court also held that based on the Federal Court decision in *Liau Kim Lian v. Bajuria* [1971] 1 MLJ 276, interest is payable where an order directs payment of costs to be taxed and that the interest is to run from the date of entry of judgment. (See also *Hunt v. RM Douglas (Roofing) Ltd* [1988] 3 All ER 823 and s. 11 of the Civil Law Act 1956).

Exercise Of Discretion

I shall now proceed to examine, consider and determine whether the learned registrar has correctly exercised his discretion after a consideration of all the circumstances or whether the learned registrar's decision on the taxation has been exercised on some wrong principle or the quantum allowed by the

learned registrar was obviously wrong in the sense of occasioning an error of principle or other material error or has exercised his discretion capriciously or mischieviously.

The item in the defendant's bill of costs for taxation was item 28 which is item 26 in Part IV of Appendix 1 to O. 59 of the Rules of the High Court 1980, which reads:

26	Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing	Dicretionary

Item 28 in the defendant's bill of costs was couched as follows:

28. 26. Mengambil arahan Defendan untuk menentang permohonan Plaintif didalam Saman Dalam Kamar (Encl 6) dan menjawab afidavit-afidavit Plaintif, mengambil cacatan arahan-arahan Defendan menyediakan draf Afidavit-afidavit Jawapan untuk Defendan dan menerangkan kepada Defendan kandungan afidavit-afidavit tersebut, menimbangkan fakta dan undang-undang membuat rujukan untuk bahan kes otoriti, menyusuli kes-kes otoriti dan mengambil nota, menyediakan deraf penghujahan membincangkan deraf penghujahan dengan Defendan, menyampaikan penghujahan di hadapan Yang Arif Pesuruhjaya Kehakiman, mengambil nota-nota penghujahan peguamcara Plaintif menyampaikan penghujahan balas dan jagaan am prosiding.

(My translation:

Taking defendant's instructions to object plaintiff's application in summons in chambers (encl. 6) and replying to plaintiff's affidavits, taking note of defendant's instructions, preparing draft affidavits in reply for defendant and explaining to defendant the contents of the said affidavits, considering the facts and the law, making references to case materials and authorities, following up with the authorities and taking notes, preparing draft submission, discussing draft submission with defendant, presenting submission before his Lordship the Judicial Commissioner, taking note of the submission of plaintiff's solicitors and presenting submission in reply and general care of the proceeding.)

The defendant's solicitor also listed 26 authorities by way of getting up.

As the costs for item 26 ie, in respect of getting up is stated to be discretionary, para 1(1) Appendix 1 Part X of O. 59 expressly provides that the amount of costs in respect of that item shall (subject to any order of the court fixing the costs to be allowed) be in the discretion of the learned registrar, within the limits of the sums so entered, if any.

Under para. 1(2) Appendix 1 Part X of O. 59, in exercising his discretion herein, the learned registrar shall have regard to all relevant circumstances, and in particular to:

(a) the complexity of the item or the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the importance of the cause or matter to the client;

(f) where money or property is involved, its amount or value;

(g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

All the relevant circumstances must therefore be considered and such circumstances shall include but not limited to the aforesaid seven circumstances. The matter which has resulted in the taxation of the defendant's bill of costs was actually encl. (6) which as stated above was the plaintiffs summons in chambers for summary judgment under O. 81 for the following orders:

(a) Pengisytiharan bahawa Defendan telah melanggari terma-terma dan syarat-syarat kedua-dua surat Perjanjian bertarikh 30/11/1996 dan Plaintif telah secara sah dan wajar di sisi undang-undang membatalkan atau menamatkan Perjanjian tersebut pada 18/04/2001;

(b) Pengisytiharan bahawa terdapat kegagalan balasan disebabkan kegagalan Defendan membekal dan menyempurnakan kerja-kerja infrastruktur dalam jangkamasa yang ditetapkan di dalam surat perjanjian tersebut;

(c) Perintah Defendan memulangkan kepada Plaintif jumlah sebanyak RM47,668.00 dengan segera;

(d) Perintah Defendan membayar gantirugi pada kadar 10% setahun seperti diperuntukkan di dalam perjanjian tersebut bagi jumlah RM47,668.00 bermula dari tarikh 29/11/1999 dan/atau jumlah keseluruhan harga belian berjumlah RM252,168.00;

(e) Perintah Defendan membayar gantirugi teladan;

(f) Perintah Defendan membayar gantirugi bagi kemungkiran kontrak;

(g) Perintah Defendan membayar faedah statutori pada kadar 8% setahun.

[My translation:

(a) Declaration that the defendant did breach the terms and conditions of the two agreements dated 30 November 1996 and the plaintiff has lawfully and properly under the law rescinded or terminated the said agreements on 18 April 2001;

(b) Declaration that there was a failure of consideration caused by the defendant's failure to supply and complete infrastructure works within the period prescribed in the said agreements;

(c) Order that the defendant return forthwith to the plaintiff a sum of RM47,668;

(d) Order that the defendant pay damages at the rate of 10% per annum as provided for in the said agreements on the sum of RM47,668 with effect from the date 29 November 1999 and/or the entire purchase price of RM252,168;

(e) Order that the defendant pay exemplary damages;

(f) Order that the defendant pay damages for breach of contract;

(g) Order that the defendant pay the statutory rate of interest at 8% per annum.

The plaintiff has filed four affidavits in support of the summons in chambers for summary judgment under O. 81 while the defendant has filed two affidavits in reply.

The learned registrar has referred to a number of authorities which lay down principles of general application in relation to the taxation of bills of costs. While these principles provide useful guidelines in this area, it is essential for the learned registrar to have regard to the specific type of application, proceeding, matter, cause or process brought before the court, as has been alluded to above by the Court of Appeal in *Chun Kok Choon JP, supra*.

The taxation of costs in respect of an application etc. which is not of the same type of application being considered by the learned registrar are not very helpful to the defendant in determining the quantum for getting up.

By way of illustration, *Bar Council v. Datuk Kanagalingam* [2000] 3 CLJ 697 concerns lodging of a complaint by the Bar Council to its disciplinary board to investigate against the respondent, which proceedings went up to the High Court and eventually the Federal Court which dismissed the Bar Council's appeal and ordered the Bar Council (appellant) to pay costs to the respondent. The review of the learned registrar's costs of RM600,000 was allowed and was reduced by Chong Siew Fai CJ (SS) to RM120,000.

In *Bank Bumiputra Malaysia Bhd v. Sri Kajang Sdn Bhd & Ors* [2002] 1 CLJ 339, the fourth defendant had earlier applied for and been granted an order dismissing the plaintiff's action against him, and for the costs of the application and of defending the action to be paid by the plaintiff. He then filed his bill of costs claiming RM30,000 as costs for getting up, and the taxing registrar taxed it down to RM8,000. Both parties applied for a review by the registrar who reduced it to RM4,000. On the fourth defendant's further application for review by a judge, it was enhanced to RM10,000.

In S*outhern Finance, supra*, the plaintiff's application for sale of land has been dismissed by the court and the registrar awarded the defendant RM10,000 for getting up which upon subsequent review was increased to RM15,000. As the registrar has disregarded the actual value of the properties amounting to RM10 million, upon review by the judge, RK Nathan, J increased it to RM30,000.

The above cases are some of the authorities referred to in the grounds of decision of the learned registrar. In my view, they demonstrate that the specific type of application is one of the decisive factors in the exercise of discretion in the taxation of a bill of costs.

Getting Up Costs For Successful Defendant In O. 14 Application

In this connection, *JP Finance (M) Bhd, supra*, which has been referred to in the grounds of decision of the learned registrar is the case which is most closely connected and substantially similar to the circumstances of the instant case which resulted in the taxation of the defendant's bill of costs.

The facts in *JP Finance, supra*, revealed that the plaintiff's claim against the first defendant was in respect of a term loan of RM600,000, interest and costs, and against the second defendant on the written guarantee given by them in respect of the repayment of the loan, interest and costs and other related charges, all amounting to RM697,541.13. The learned registrar gave

an O. 14 judgment against the second defendant. The appeal against the O. 14 judgment was allowed and the second defendant was given unconditional leave to defend as there was found to be a *bona fide* triable issue. The plaintiff thereafter sought to withdraw the action against the second defendant with liberty to file afresh. Costs of the withdrawn action was ordered to be paid to the second defendant before any new action in respect of the claim against them was filed. The review sought is in respect of "getting up" the O. 14 application before the learned registrar who awarded RM12,000 as costs and "getting up" the appeal from the learned registrar's decision, and a sum of RM8,000 was awarded as costs.

Upon a judge's review, VC George J (later JCA) taxed off RM10,000 for the former and allowed RM2,000, while for the latter, a sum of RM6,500 was taxed off, thereby allowing RM1,500. For the judge's review, costs of RM250 had been allowed being the costs of drawing objections to decisions of the registrar, for drawing, issuing and filing of service of the summons to attend before the judge for review, for attending at the hearing of the review and "getting up" the objections and for the review.

His Lordship at p. 55 held that item 1(c) of Appendix 2 to O. 59 provides that in a claim for a debt or liquidated demand, in respect of O. 14 proceedings, the successful plaintiff is allowed a fixed basic costs of RM350, and that:

> ... this fixed amount *inter alia*, covers all the work involved in instituting the proceedings including taking instructions to sue, to settle and settling the writ and the endorsement thereon and/or the statement of claim, taking instructions to file the O. 14 application and taking instructions for and drawing the affidavit in support of the application and could include, as it frequently does, the taking of instructions on any affidavits filed in opposition to the O. 14 application and in respect of any reply thereto. It also covers the consideration of the facts and the law, attending on and corresponding with the client, attending at the hearing of the O. 14 summons and the general care and the whole of the conduct of the proceedings up to and including the O. 14 hearing.
>
> Up to the O. 14 stage, solicitors having the conduct of the matter on behalf of the defendant generally would have put in about as much effort and work as the plaintiff's solicitor had put in – they also have to take instructions on the writ and on the endorsements thereon and on any statement of claim that may have been served. They have to take instructions on the affidavit filed in support of the O. 14 application and for drawing and filing the affidavit in opposition to the application. In 'getting up' the case to oppose the O. 14 application, they have to consider

the facts and the law, they also have to attend on and correspond with their clients, they have to attend at the hearing of the O. 14 summons. They have the general care and conduct of the proceedings up to and including the O. 14 application.

However the responsibility of the solicitors and counsel for the defendant at the O. 14 stage can, in a manner of speaking, be said to be somewhat greater than that of the plaintiff's legal advisers in that if the plaintiff fails, the matter has not come to an end whereas if the defendant fails that would result in a final judgment against him. But apart from that, as has been seen, the solicitors on both sides of an O. 14 application would normally have put in the same amount of effort and work.

It seems to me that in the circumstances, in assessing the quantum of costs to be awarded to a successful defendant in an O. 14 application, the fact that the rules committee have prescribed RM350 as fixed costs for a successful plaintiff applicant cannot be ignored.

As has been pointed out, the defendant's legal advisers can be said to carry a heavier responsibility and no doubt some allowance has to be made for that.

The learned judge did not think that the defendant should be allowed anything significantly greater than that would have been awarded to the plaintiff if he had been successful in the O. 14 application, adding that for the taxing officer to allow in favour of a successful defendant in an O. 14 application anything substantially greater than the amount fixed by the rules committee in respect of a successful plaintiff would be to make nonsense of the amount prescribed as fixed costs by the rules committee. His Lordship further observed as follows:

In an O. 14 application, the issue is whether there are triable issues and the primary purpose of the application is to decide whether there has to be a trial. Neither the plaintiff nor the defendant is, at this stage, required to prove his case. Where final judgment is entered for the plaintiff, it is entered summarily, without trial, in consequence of the court finding that there are no triable issues that merit the matter going to trial. It is not because the plaintiff has proved his case.

With respect, I agree and hereby adopt the above principles.

Order 81 application is in my view analogous to and *sui generis* with an O. 14 application in that O. 81 r. 1(1) enables a plaintiff to apply to the court for summary judgment on the ground that the defendant has no defence to the plaintiff's action begun by writ ensorsed with a claim for:

(a) specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages; or

(b) rescission of such an agreement; or

(c) the forfeiture or return of any deposit made under such an agreement.

An O. 14 application similarly provides that a plaintiff may on the ground that the defendant has no defence to a claim included in the plaintiff's writ, or to a particular part of such a claim or part except as to the amount of any damages claimed, apply to the court for summary judgment against the defendant.

Although O. 14 and O. 81 applications are mutually exclusive (see O. 14 r. 1(3), O. 81 provides for a procedure similar to O. 14 (see *Malaysian High Court Practice* 1998 MLJ Desk Edn. p. 5301 para. 81.1.1; *Alloy Automotive Sdn Bhd v. Perusahaan Ironfield Sdn Bhd* [1986] 1 CLJ 2; [1986] CLJ (Rep) 45 (FC); *Wong Tham Meng v. Tiang Eng & Anor* [2001] 6 CLJ 548 (HC) and *Lau Kah Ding & Sons Sdn Bhd v. Tamasa Development Sdn Bhd* [2001] 7 CLJ 288 (HC)). There are common denominators in these two specific types of application *viz* that where the defendant has no defence to the plaintiff's action, the plaintiff may apply for summary judgment against the defendant, or conversely the defendant who has successfully raised a *bona fide* triable issue would be given leave to defend.

In the circumstances, I am of the view that the aforesaid excerpt of the judgment in *JP Finance, supra*, in relation to an O. 14 application would apply *mutatis mutandis* to an O. 81 application.

The doctrine of *stare decisis* or judicial precedent dictates that a court other than the highest court is obliged generally to follow the decisions of the courts at a higher or the same level in the court structure or hierarchy, subject to certain exceptions affecting especially the Court of Appeal: *Dalip Bhagwan Singh v. Public Prosecutor* [1997] 4 CLJ 645 per Peh Swee Chin FCJ who delivered judgment of the Federal Court. I would add that cases which are similarly circumstanced should be treated similarly. The learned registrar is in this connection bound by the decision of the High Court in *JP Finance, supra*.

JP Finance was cited in support of the plaintiff before the learned registrar but apart from citing the case in the grounds of decision, the principles enunciated by the learned judge in that case whose facts bore remarkable resemblance and indeed struck substantial similarity to those in the instant review, seems to have escaped the attention of the learned registrar, thereby resulting in occasioning an error of principle, in which case a review of the taxed costs would become necessary.

Having regard to all the circumstances and the principles enunciated in *JP Finance, supra,* I hereby allow this review and tax off RM16,000 from the taxed costs of RM18,000, thereby allowing a sum of RM2,000 as costs for the successful defendant in the O. 81 application containing the aforesaid prayers. In line with the Federal Court decision in *Liau Kim Lian, supra,* I also allow interest at 8% per annum on the RM2,000 from the date of judgment on 3 December 2001 when the plaintiff's application under O. 81 was dismissed, to the date of realisation.

For the plaintiff whose review is hereby allowed, I award costs of RM250 with 8% interest from the date hereof to the date of realisation.